IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

R.S.A. No. 1566 of 2004
Date of decision Februrary 1, 2007

Joginder Singh

.....Appellant

Versus

Smt. Veero

.....Respondent

CORAM: HON'BLE MR. JUSTICE VINEY MITTAL

Present:- Sh. Premjit Kalia, Advocate
for the appellant.

Sh. Vishal Sodhi, Advocate
for the respondent.

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Viney Mittal, J (Oral)

The defendant is in second appeal. He has lost concurrently before the two Courts below in a suit for declaration filed by the plaintiff claiming joint possession to the suit property to the extent of ½ share. The parties are real brother and sister being children of Ganga Singh, who died on November 13, 1990.

Veero-daughter of Ganga Singh filed a suit for declaration claiming that she was owner in possession of ½ share of the suit property. Alternatively, she claimed joint possession to the extent of ½ share. She claimed that originally, Ganga Singh had executed a Will in favour of defendant-Joginder Singh on October 25, 1978 but the said Will had been cancelled by a registered cancellation deed dated June 17, 1983. According to the plaintiff, thereafter, no Will had been executed by Ganga Singh and, therefore, the parties were entitled to succeed to the property in equal shares.

The suit was contested by Joginder Singh, son of Ganga Singh. He set up a registered Will dated April 23, 1984, claiming the same

to have been executed by Ganga Singh in his favour. He claimed that as per the said Will, he alone was entitled to succeed to the entire estate left behind by Ganga Singh.

Both the Courts below have held that the Will dated April 23, 1984 set up by defendant-Joginder Singh was surrounded by suspicious circumstances. Consequently, the above execution of the said Will has not been accepted. As a result, the suit filed by the plaintiff has been decreed and it has been held that parties shall share the estate left behind by Ganga Singh in equal shares.

Sh. Premjit Kalia, learned counsel appearing for the defendant-appellant has argued that Ganga Singh had executed a registered Will on April 23, 1984 and had died on November 13, 1990 and in these circumstances, since the aforesaid Ganga Singh had lived for a period of more than six years after the execution of the said Will, therefore, this fact alone is sufficient to discard any suspicious circumstance with regard to the execution of the Will. It has been contended by the learned counsel that all the attesting witnesses of the Will dated April 23, 1984 Exhibit D1 had been produced and it had never come on record that there were any suspicious circumstances. Learned counsel has also argued that Ganga Singh prior to his death was living with his son Joginder Singh.

I have duly considered the contention of learned counsel but find no force in the same.

It has been clearly proved on record that Ganga Singh had earlier executed a registered Will on October 25, 1975 in favour of Joginder Singh. However, later on he executed a registered cancellation deed Ex.P-2 on June 17, 1983. In the cancellation deed it was clearly

mentioned by Ganga Singh that his son, Joginder Singh was maltreating him and had even caused injuries to him. On that basis, the earlier Will of 1978 was revoked. In these circumstances, it is very strange that within 7/8 months, another Will was executed by aforesaid Ganga Singh in favour of his son Joginder Singh. It is also very strange that in the Will Ex. D-1 dated April 23, 1984 there is neither any mention of the earlier Will dated October 25, 1978 nor of the cancellation deed dated June 17, 1983. The aforesaid omission is a very strange factor which raises a serious doubt on the execution of the aforesaid Will by Ganga Singh. The aforesaid suspicion has not been removed by the defendant-Joginder Singh, while leading evidence.

At this stage, another argument of learned counsel, Sh. Premjit Kalia must also be noticed that the aforesaid cancellation deed Ex. P-2 was not proved.

The aforesaid contention of the learned counsel can also not be accepted. The cancellation deed dated June 17,1983 Ex. P-10 is a registered document. The said document had duly been exhibited on record. No objection whatsoever, was ever raised by the defendant-appellant at any point of time with regard to mode of proof. In these circumstances, it is too late for learned counsel to contend that the said document had not been duly proved.

No other point has been urged.

Nothing has been shown that the findings of fact recorded by the two Courts below suffer from any infirmity or are contrary to the record.

No question of law, much less any substantial question of law, arises in the present appeal.

Dismissed.

(VINEY MITTAL)
JUDGE

February 1, 2007
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